RECENT CASES

BILLS AND NOTES—ACCOMMODATION MAKER—EXTENSION OF TIME OF PAYMENT—EFFECT.—COWAN V. RAMSEY, 140 PAC. (ARIZ.) 501.—*Held,* that where the payee of note who has knowledge that the defendant maker signed merely for the accommodation of the other party, and the payee enters into a binding agreement for an extension of time with the other party, the accommodation maker is not thereby discharged.

Before the passage of the Negotiable Instruments Law, one who made a promissory note for the accommodation of another was, as between the parties, a surety. The holder, who had knowledge of the true relation of the parties, was bound to act towards such accommodation maker as toward a surety in order to preserve his rights against him. Under such circumstances an extension of time to the person ultimately liable, without the consent of the surety, that is, the accommodation maker, released the latter. *Guild v. Butter,* 127 Mass. 386; *Barron v. Cady,* 40 Mich. 259; *Wright v. Bartlett,* 43 N. H. 548; *Bank v. Walter,* 104 Tenn. 11. There were, however, a few early cases which held, as a result of the influence of Lord Mansfield's decision in the case of *Fentum v. Pocock,* 5 Taunton 192, that the accommodation acceptor or maker is the party ultimately and primarily liable, regardless of any knowledge the payee or holder might have. *Wilson v. Isbell,* 45 Ala. 142; *Cronise v. Kellogg,* 20 Ill. 11; *Anderson v. Anderson,* 4 Dana (Ky.) 352. This was the minority view. The principal case rests on the ground that the Negotiable Instruments Law has changed the prevailing common law so as to make the accommodation maker or acceptor primarily and not secondarily liable. If this is true there is no escape from the conclusion of the court. The courts have almost unanimously taken this view in the few cases so far adjudicated. *Vanderford v. Farmers, etc., Nat. Bank,* 105 Md. 164, 66 Atl. 47; *Cellers v. Lyons,* 49 Oreg. 186, 89 Pac. 426; *Waestenholme v. Smith,* 34 Utah 300, 97 Pac. 329; *Bradley Engineering & Mfg. Co. v. Heyburn,* 56 Wash. 628, 106 Pac. 170; *National Citizens Bank v. Toplitz,* 81 App. Div. 593, 71 N. E. 1; *Richards v. Market Exch. Bank Co.,* 81 Ohio St. 348, 90 N. E. 1000; *Fritts v. Kirchdorfer,* 136 Ky. 643, 124 S. W. 882; *Union Trust Co. v. McGinty,* 212 Mass. 205, 98 N. E. 679; *Murphy v. Panter,* 125 Pac. (Oreg.) 292; *Lumberman's Nat. Bank v. Campbell,* 121 Pac. (Oreg.) 427. The Iowa Court is the only one which has taken a contrary view. *Fullerton Lumber Co. v. Snouffer,* 139 Iowa 176, 117 N. W. 50. In the case of *Collers v. Lyons, supra,* the court maintained this view notwithstanding the fact that the word "surety" was placed after the accommodation maker's signature. The decision in this case has been criticized because it did not consider a provision of the act that "a person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity." Whatever views one may entertain about the correctness of the decision in the principal case on principle, it is certain that it is entirely in accord with the well considered cases.

COMMERCE—STATE REGULATION—CONGRESSIONAL INACTION—RATES FOR INTER-STATE FERRIAGE.—PORT RICHMOND AND BERGEN POINT FERRY CO.

v. BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, 34 SUP. CT. R. 821.—The Ferry Co. was incorporated by act of the New York legislature to maintain a ferry across the Kill von Kull from Port Richmond, Staten Island, N. Y., to Bergen Point, Hudson Co., N. J. By an act passed in 1799 the New Jersey legislature had given the Board of Freeholders power to fix the rates of ferriage from Hudson County to New York. The plaintiff in error contends that this act was repugnant to the commerce clause of the Federal Constitution. *Held,* that a state may fix reasonable rates of ferriage from its shores to the shores of another state over a boundary stream until Congress undertakes to regulate such rates.

The Federal Constitution provides that "The Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." *Art. 1, Sec. 8.* Ferries over waters separating the states cannot be deemed beyond the control of Congress under this power. *Gloucester Ferry Co. v. Pennsylvania,* 114 U. S. 196. But the states are not expressly excluded from exercising control over such commerce and if they are excluded it must be because of the nature of the power requires that the authority should not reside in the states. *Crandall v. Nevada,* 6 Wall. 35; *Sturgis v. Crowninshield,* 4 Wheat. 122. In considering the nature of the power the thing to look at is the subject of the power, as no rule can be laid down for the power as a whole. *Cooley v. Board of Wardens of Philadelphia et al.,* 12 How. 299. Where the subjects are so national in their nature as to admit of only one uniform system of regulation the power over them is exclusive in Congress. *Transportation Co. v. Parkersburg,* 107 U. S. 691. But where the subject of the commerce power is local and limited in its nature and sphere of operation the states may prescribe regulations until Congress interferes and assumes control. *Gloucester Ferry Co. v. Pennsylvania, supra.* As where Congress hasn't regulated wharfage charges the states may do so. *Transportation Co. v. Parkersburg, supra.* Congressional inaction on such subjects of a local nature is to be deemed a declaration that for the time being and until Congress acts the states may regulate. *City of Mobile v. Kimball,* 102 U. S. 691. From the earliest times the states have regulated ferries and they can more advantageously do so, as they are of a purely local nature. *Gloucester Ferry Co. v. Pennsylvania, supra.* But the states must not place any burdens upon inter-state commerce. *Transportation Co. v. Parkersburg, supra.* A reasonable charge however is in no sense a burden on such commerce. *City of Mobile v. Kimball, supra; Gloucester Ferry Co. v. Pennsylvania, supra.* In the principal case the charges were found to be reasonable and the cases seem all agreed that this is the only limitation on state authority in the absence of Congressional action.

EQUITY—SUIT TO REMOVE CLOUD ON TITLE.—LOUISVILLE & NASHVILLE R. R. v. WESTERN UNION TEL. CO., 34 SUPREME COURT REPORTER, 810.—*Held,* that a bill in equity will lie to remove a cloud on title, where both parties are non-resident, and where, under local law as construed by the state courts, the rightful owner of real property within the state may maintain a suit to dispel a cloud cast upon his title, even though